

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

:ORDER:

M/s. Hilton Estate Pvt. Ltd. Vs State of Rajasthan & Ors.

**S. B. CIVIL WRIT PETITION NO.2367/2003
UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

Date of Order : 16th Feb., 2005

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PRESENT

HON'BLE MR. JUSTICE PRAKASH TATIA

REPORTABLE

Mr.J.P.Joshi, for the petitioner.

Mr.H.R.Soni,Addl.GA, for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

Brief facts of the case are that the land in question was originally belonging to the erstwhile ruler of the State of Udaipur. The property in question is described as personal property of the Ex-ruler of the Udaipur for which petitioner has placed on record the copy of the list of the properties of the Ex-ruler. The said property was sold by the then

His Highness Maharana Bhagwat Singh to M/s. Lake Palace Hotels & Motels Pvt. Ltd. by registered sale deed dated 2nd March, 1963, copy of which is placed on record as Annex.1. The said property was sold to the petitioner vide sale deed dated 20th May, 1994 (Annex.3). The petitioner submitted an application for grant of permission for raising construction of a commercial complex, upon which, the respondent Municipal Council, Udaipur vide communication dated 19.2.2002 informed the petitioner that he should apply by submitting an application in proper form alongwith requisite fees. The petitioner was also informed that since petitioner wants to raise construction of a commercial complex, therefore, he is required to get the land converted for commercial purposes. The petitioner, thereafter, submitted an application seeking permission for construction under Section 170(1) of the Rajasthan Municipalities Act on 23rd March, 2003 (Annex.5). The petitioner also deposited the requisite fees vide Annex.5. The respondent Municipal Council, Udaipur by communication dated 28th March, 2003 (Annex.6) informed the petitioner that petitioner has not produced the documents evidencing the conversion of the land and he was also informed that all the matters relating to the conversion of land have been stayed by the State Government.

The petitioner faced with this demand of conversion of land

before permission to raise construction can be granted, preferred this writ petition and sought relief that the respondent Municipal Council, Udaipur may be directed to grant permission to the petitioner to raise construction in terms of the application submitted by the petitioner under Section 170(1) of the Rajasthan Municipalities Act and further sought relief that the respondent no.2 be restrained from demanding any amount from the petitioner on account of conversion of the petitioner's land to commercial purpose.

According to petitioner, the property in question was originally belonging to the erstwhile ruler of the State and after the merger of the States, the property in question was held to be private property of Ex-His Highness. The Ex-His Highness sold the property to M/s. Lake Palace Hotels and Motels Pvt. Ltd. Udaipur. According to learned counsel for the petitioner, there was no restriction for use of land when the land was belonging to the erstwhile ruler nor any restriction was put by the seller, erstwhile ruler when he transferred the property by a registered sale deed dated 2nd March, 1963 to M/s. Lake Palace Hotels & Motels Pvt. Ltd. Udaipur. The petitioner purchased the property from M/s. Lake Palace Hotels & Motels Pvt. Ltd. by a registered sale deed dated 20th May, 1994 and that sale deed also contains no restriction against the use of the property or contains any condition that land shall be used

only for particular purpose by the purchaser. According to learned counsel for the petitioner, the petitioner has right to use the land in question as per his wishes because of the reason that petitioner did not purchase the land containing any condition restricting its use for any particular purpose, therefore, the petitioner has every right to his land for any purpose including for commercial purpose and position has already been cleared and it is well settled in view of the various decisions of this Court that no conversion charges can be demanded for a land of which use has not been restricted to a particular purpose.

According to learned counsel for the petitioner, the demand sought to be raised against the petitioner by the Municipal Council, Udaipur is under assumption that petitioner is required to pay the land conversion charges under Section 173A of the Rajasthan Municipalities Act, 1959, which is wrong. Sub-section (1) of Section 173A applies to the land, which was sold either by the State Government or any Municipality or by any local authority, but in this case, the land was not sold or allotted by the State Government, Municipality or local authority even to the original owner, Ex-ruler of the Udaipur State. Secondly, the petitioner is not intending to use the land in contravention to the land use shown in the Master Plan. According to learned counsel for the petitioner, even as per amended sub-section (2) of Section 173A, all

land falling in Municipal area are covered under Section 173A even then by this provision also it has been allowed to land owner to continue with the use of the land for which he was using and other land can be used in consonance with the purpose shown in the Master Plan irrespective of the fact whether such land was sold by the State Government or local body or otherwise and said restriction applies to the even those land which are not covered by sub-section (1) of Section 173A of the Act of 1959. According to learned counsel for the petitioner, though the petitioner's land is not earmarked for any particular use and it was put to use for commercial purpose or other than residential purpose by the Ex-Ruler himself and by the petitioner's predecessor in title decades ago, therefore, he has right to use the land being for commercial purposes and further the petitioner is intending to use the land in consonance to the purpose as shown in the Master Plan for the land in question, therefore, the petitioner, in fact, only acting in accordance with scheme form in Master Plan. Learned counsel for the petitioner also submitted that not only the land was sold without any condition of restriction about use of the land, but in fact, it was put to use for commercial purposes is proved from the even reports of the Senior Town Planner, who reported that nearby area is occupied by the Hotels.

Learned counsel for the petitioner relied upon various judgments

of this court, which are (i) Rajkumar & Anr. Vs. Municipal Corporation, Jodhpur (S.B.Civil Writ Petition No.2715/1997, decided on 5.3.1999) and which was upheld by the Division Bench of this court delivered in the case of Municipal Corporation, Jodhpur & anr. Vs. Raj Kumar & Anr reported in 2000(3) WLC (Raj) 299, (ii) the judgment of the learned Single Judge delivered in the case of Lalit Kumar Bothra Vs. Municipal Board, Sheogang reported in 2001WLC (Raj.) (UC) 152 (decided on 10.10.2000), and (iii) the judgment of the learned Single Judge delivered in the case of M/s. Jawahar Sons Enterprises Pvt. Ltd. Vs. State & Ors (S.B.Civil Writ Petition No.2736/2000, decided on 9.1.2002).

In the case of Municipal Corporation, Jodhpur Vs. Raj Kumar & Anr. (supra), the Division Bench considered the scope of Section 173A and held that right of owner of the land to change its use from residential to commercial purpose or vice versa, if sale or allotment was without any condition or restriction on use of the land only for specified purpose then no conversion charges are payable by the owner of the land on account of conversion of the land for different use from which it is being used.

Learned counsel for the respondents submitted that petitioner has not placed on record any proof that there was no restriction in the

petitioner's title deed and petitioner was permitted by the vendor to use the land for any purpose as per his wish. It is also submitted that petitioner himself vide Annex.1 (petitioner's application dated 11th July, 2003 annexed with the letter of the Dy. Legal Remembrancer dated 11th July, 2003 of the UIT) applied for conversion of his land, therefore, the petitioner now cannot say that petitioner purchased the land without any condition against its use. Learned counsel for the respondent also submitted that the respondent alone can decide or may be permitted to decide whether the land in question is commercial land or residential land and this court may not prefer to inquire into the nature of the land in dispute.

On legal point, learned counsel for the respondent submitted that in view of the judgments referred above, the Government amended Section 173A of the Rajasthan Municipalities Act and inserted sub-sections (2) and (3) so that the land left out from the ambit of sub-sec. (1) of Section 173A may also be covered and the land which has not been originally sold by the State Government or Local Bodies, may come under restriction so that no land be permitted to be used for the purpose which is not in conformity of use of the land shown in the Master Plan. Sub-sec (3) has been introduced so that State Government may permit the change of land use in public interest and may recover

charges from the land owner for converting the land. Learned counsel for the respondent submitted that the purpose for the amendment was to see that land use should be in consonance and in conformity with the Master Plan and earlier in absence of sub-section (2), this court in the above referred judgments interpreted that the local authority or the competent authority cannot demand conversion charges for a land, which was not purchased from the State Government, Municipality or the local authority. To cover left out properties as is to include all land falling in Municipal area, the sub-section (2) was inserted. The further purpose of insertion of sub-section (2) was that no one be permitted to use the land for the purpose other than as provided in the Master Plan even if initially there was no restriction for the use of the land. in earlier provision of Section 173A, words “subject to condition of restraining its use for a particular purpose” were there and because of that reason this court held that when the land was not sold with restriction, restricting its use for any particular purpose than its use has not become restricted by sub-sec.(1) of Section 173 (as stood before insertion of new sub-secs.(2) and (3) in Section 173) and, therefore, no land conversion is necessary nor the Government can demand for conversion charges. Now in view of sub-sec. (2) of Section 173A, no land owner is allowed to use the land for any other purpose than the purpose which has been shown for the land in Master Plan.

Sub-section (3) in new Section 173A empowers the State Government to convert the land for use for any other purpose and charge the fees for conversion of land. According to learned counsel for the respondents sub-section (3) inserted in the year 1999, is a provision containing non-obstant clause and it has over riding effect over sub-section (1) and (2) of Section 173A, which empowers the State Government to allow the change of land use after charging the conversion charges from the owner of the property. Learned counsel for the respondent relied upon the judgment of this court delivered in the case of Kishan Lal Pungalila Vs. Municipal Corporation, Jodhpur & Anr. (S.B.Civil Writ Petition No.4197/2002, decided on 17.12.2002) wherein according to learned counsel for the respondent, the earlier judgment of this court delivered in the case of Lalit Kumar Bothra (supra) was considered and, thereafter, after noticing the effect of the amendment, this court held that even if the land in question may not have been purchased from the Municipal Corporation, State Government or the local authority and if the land is situated within the Master Plan area, its use whether residential or commercial can be permitted only by the Municipal Corporation in accordance with the conditions of the Master Plan. According to learned counsel for the petitioner, in view of the above judgment, it is clear that it is the local authority who can only permit the use of the land either for commercial or for residential

or for any other purpose and as per statutory provision, i.e., sub-section (3) of Section 173A, the local authority has power to charge conversion charges. Learned counsel for the respondent further relied upon the judgment of the Hon'ble Apex Court delivered in the case of Union of India Vs. Dev Raj Gupta (Civil Appeal No.1996/1990, decided on 13.9.1990) wherein the Hon'ble Apex Court held in that case that lessee is not entitled to use the land for commercial use without permission of the authority and without payment of conversion charges. (In that case, the land was given on lease for residential purposes was an admitted fact).

I considered the submissions of learned counsel for the parties and perused the record. So far as the question of title of the petitioner is concerned, it is not in dispute. The property was the property of the erstwhile ruler of the Udaipur State is also not in dispute and the said property was sold more than 40 years ago by the erstwhile ruler to M/s. Lake Palace Hotels and Motels Pvt. Ltd vide sale deed dated 2nd March, 1963. The property in question has been described as “personal property” of Erstwhile Ruler seller. The property was purchased by a company registered under Companies Act having its activities of business “inter alia of running Hotel and Motel at Udaipur and Rajasthan and elsewhere in India and to provide lodging and boarding and other

facilities to the public including tourist Visitors and other delegated coming to India from Foreign Countries and to the members of delegated and mission from foreign Countries and to encourage and carry on and facilitate tourist guide in India more elaborately detailed in the objects clause of the Memorandum of Association”, which is mentioned in the sale deed itself (Annex.1). The same property was sold to the petitioner by the seller vide sale deed dated 20th May, 1994. In the sale deed it is mentioned that the property in question is known as “The State Motor Garage Garden Hotel”. It is also mentioned that the property is in the tenancy of State where Housing Corporation and in tenancy of others. It cannot be presumed the Erstwhile Ruler more than 40 years ago and a private limited company in the year 1999 will give wrong facts in the sale deeds in anticipation that after several years Master Plan will be prepared and some restriction will be imposed about the land use or that the law will be amended in the year 1999. Therefore, there is sufficient material available on record to show that land in question was never used for residential purpose and this fact finds support from the letter of the Senior Town Planner (Annex.8) wherein he described the land by saying “land referred and where at present Garden Hotel is running, entire area has been shown area of hotel in Master Plan” (translated in english)

In any of the these documents, there is no condition restricting the use of the land for any particular purpose. The above facts also clearly reveal that the property was not sold by the State Government, Municipality or any local authority to any of the persons mentioned above. The land appears to have never been used for residential purpose. It appears to have been used for other than residential purpose. May, incidentally for living.

Keeping in mind above factual position, we may look into legal provisions. The relevant portion of unamended Section 173A is as under: -

“173-A. Power of the State Government to allow change in the use of land-(1) Notwithstanding anything contained in this Act, where any land has been allotted or sold to any person by a municipality or the State Government subject to the condition of restraining its use for a particular purpose, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of such land to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charges as may be prescribed:

Provided that the rates of conversion charges may be different for different areas and for different purposes.

(2) The conversion charges so realised shall be credited to the Consolidated Fund of the State or to the fund of the municipalities as may be determined by the State Government.

(3) Such charges shall be the first charge on the interest of

the person liable in the land the use of which has been changed and shall be recoverable as arrears of land revenue.”

It appears from the unamended Section 173A that this was provision applicable to the land:- (a) sold by the State Government, (b) or Municipality (c) or by local authority with condition of restraining the use of the land for a particular purpose. The above Section 173A was examined by this court in various cases and the controversy is settled by the judgments referred above and it was held that no conversion charges can be demanded by the State Government for a land, which had no restriction for use of the land or which has not been sold by any particular purpose and Section 173A (as stood) to the land sold by the State Government, Municipality or by local authority.

The State Government found some difficulties and, therefore, amended the Section 173A. The relevant portion of Section 173A is as under: -

“173-A. Restriction on change of use of land and power of the State Government to allow change of use of land.-
(1) No person shall use or permit the use of any land situated in any municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government, any municipality, any other local authority in accordance with any law for the time being in force or, otherwise than as specified under a

Master Plan, wherever it is in operation.

(2) In the case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal area for the purpose other than that for which such land-use was or is permissible, in accordance with the Master Plan, wherever it is in operation, or under any law for the time being in force.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the State Government or any authority authorized by it by notification in the Official Gazette, may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest, on payment of conversion charges at such rates and in such manner as may be prescribed with respect to the following changes in use: -

(i) from residential to commercial or any other purpose; or

(ii) from commercial to any other purpose; or

(iii) from industrial to commercial or any other purpose; or

(iv) from cinema to commercial or any other purpose

Provided that rates of conversion charges may be, different for different areas and for different purposes.”

The effect of the amendment of 1999 is that : -

(1) All land falling in Municipal Area is included for the purpose of being governed by the provisions of Section 173A whether sold by the State Government or Municipality or any other authority or otherwise and which are not covered under sub-section (1) (underlined is effect of new sub-section (2)

(2) Use of land situated in Municipal Area shall be in conformity with

A. The purpose for which it was originally allotted or sold (original use of land governed by sub-section 2)

OR

B. For the only purpose as specified under Master Plan (where-ever it is in operation) (effect of new sub-sections (1) and (2) of Section 173A)

It is significant that sub-section (1) of Section 173A recognizes the right of land owner to use the land for the purpose for it was allotted or sold and prohibits only use of land contrary to purpose for which it was sold or allotted. Further it is also significant that even after amendment of Section 173A, sub-Section (2) further recognized the right of the owner of the land to use the land for the purpose “for which such land use was”. Such person is further permitted to use the land as permissible in accordance with Master Plan. Therefore, the owner has, by virtue of amended provision has right to use the land for the purposes for which it was sold or allotted to him since the land use is also in conformity with land use shown in Master Plan.

Effect of the sub-section (3) is that inspite of restriction as imposed by sub-sections (1) and (2), the State Government shall have

power to convert the land for any purpose and for that purpose the State may demand charges. Meaning thereby if a person having his land with restricted land use in terms of his title deed, he may seek conversion of his land to other category after obtaining permission from the Government for that he is required to pay charges as per rule. Another effect of sub-section (3) is that by this sub-section, the State Government has been given power to convert the land for use for any purpose, even can allow the land use which is not in conformity of the Master Plan because of non-obstant clause in sub-section (3) of Section 173A. Sub-section (4) of Section 173A is very significance. By this all changes of use of land made before and are not in conformity with the provisions of the Rajasthan Municipalities Act, 1959 can be regularized and for that purpose, the person concerned is required to apply before the State Government or any authority authorized by the State for regularization of said use. For this also, the State is empowered to charge the conversion charges as provided under sub-section (3) of Section 173A of the Act of 1959. The sub-section (5) provides that even in case the person, who changed the use of the land and that change is not in conformity with the provisions of the Act of 1959 then the State and the State Authorities can suo motu determined the conversion charges after due notice and after giving opportunity of hearing to the concerned parties and, thereafter, may determine the conversion

charges, which shall be payable to the concerned Municipality. None of the provision of the Rajasthan Municipalities Act provides that there shall be automatic conversion of the user of the land because in the Master Plan the land in question fell in area reserved for any particular purpose.

Therefore, a complete reading of all the sub-sections of Section 173A further reveals that the land of which use has been changed, is at the most liable for conversion charges for the purpose of regularization. None of the above provisions as framed under Section 173A provides that the person, who purchased the property without having restriction for its use shall now after coming into force of the amended provisions of law shall have restriction for the use of the land as a condition in the title deed. The above provisions, particularly, sub-sections (1) and (2) only provides that as mentioned above; (i) no person shall use or permit the use of any such land for the purpose other than that for which such land use was, or (ii) shall not use the land in violation to the use shown in the Master Plan. The use of land, which has been changed in violation of provisions of Rajasthan Municipalities Act, 1959 during the period when the Act of 1959 was/is in force requires to be got regularized by the person, who has changed the use of land and if he chooses not to apply for such conversion, the State Government or the

authority authorized by the State may determine the conversion charges and recover it from that person. The question of demanding any conversion charges for change of land use cannot arise when a case is not falling in any of the provisions of sub-sections (3), (4) and (5) of Section 173A of the Rajasthan Municipalities Act, 1959.

The Hon'ble Apex Court in the judgment delivered in Union of India Vs. Dev Raj Gupta (supra) while considering provisions of Punjab Municipal Corporation Act, 1976 held that "The High Court is further not right in holding that there was an automatic or a statutory conversion of the user of the land because in the Master Plan the land in question fell in the area reserved for commercial use. The High Court failed to appreciate that the change of user of the land permitted by the plan was only enabling in nature. It lifted the restriction which was otherwise there for using the land for commercial purpose". Further, the Hon'ble Apex Court held that "the plan helps the parties to change the user, if the parties mutually agree to do so. It does not permit the occupant to change the user unilaterally." The sub-sections (1), (2) and (3) of Section 173A nowhere put an obligation upon the owner of the property to get his land converted in consonance with the use of land as shown in the Master Plan. Therefore, the person, who even after coming into force of the Master Plan continued to use the land for the

purpose for which it was purchased or allotted then he is free to do so. The sub-section (2) only restricts the use of the land in contravention to the use, which has been shown in the Master Plan. Sub-section (3) of Section 173A also permits the State Government to allow the conversion of the land in public interest in all cases notwithstanding the restriction contained in sub-sections (1) and (2) of Section 173A.

In this case, from the documents placed on record running from the year 1950 to 1994 there appears no condition in any of the document restricting use of the land for any particular purpose. The petitioner's case is also that the land in question is being used for commercial purposes from very beginning or at least before the year 1963 because the property was purchased by the Private Limited Company running Hotels and Motels, which is clear from the sale deed Annex.1 dated 2nd March, 1963. It is also submitted by the petitioner in the writ petition that the property in question was in possession of the Ware Housing Corporation. The petitioner relied upon the facts which are mentioned in the petitioner's sale deed dated 20th May, 1994 wherein the vendor and the purchaser petitioner incorporated the facts that the property in question was let out to the Rajasthan Ware Housing Corporation Ltd. and to other tenants and it has been mentioned that the company is selling the property because the company is not getting

any income from this property and the company is not in hope that the land will be vacated soon. The petitioner also relied upon the Annex.R/2, the letter written by the Commissioner, Municipal Council, Udaipur, which has been produced by the Municipal Council itself wherein it is clearly stated that the land in question is situated at a place where the commercial activities are going on and in nearby place the construction permission was sought by the Jyoti Hotel and in that matter, the Rajasthan High Court restrained Municipal Council from demanding conversion charges and following the judgment of this court, the construction permission was granted and the construction was regularized. In this very letter, the Commissioner, Municipal Council, Udaipur conveyed that the land use of the land in question in the Master Plan has been shown as commercial and on spot, the land was used as a State Garraze, which has now been removed. The petitioner also relied upon the communication dated 2.8.2003 (Annex.8) whereby it was conveyed by the Sr. Town Planner that the land in question is within the commercial area shown in the Master Plan and in nearby area the hotels are running and the land in question is vacant but in the eastern side of this land, garden hotel is running and in the entire nearby area, the commercial activities are going on. According to learned counsel for the petitioner, the petitioner is seeking permission to raise construction of a commercial complex and in view of the fact that there was no

restriction in the sale deed executed in favour of the petitioner or his predecessor and there was never any restriction for use of the land for a particular purpose only and since the land is being used for commercial purposes and petitioner is not seeking any permission to permit the petitioner to use the land for any other purpose than shown in the Master Plan, therefore, even sub-section (3) of Section 173A cannot apply and conversion charges cannot be demanded.

In both the counts, i) the land has been sold to the petitioner by any of the authorities even if the case is considered under sub-section (2) of Section 173A then without any restriction for use of the land and (ii) the petitioner is not seeking conversion of the land (iii) the petitioner is seeking permission to raise construction to use the land for the same purpose for which land was put to use even by his predecessor decades ago (iv) petitioner wants to keep the land use in conformity with the Master Plan, therefore, the respondents have no right to demand any conversion charges.

The decision of the Single Benches and the Division Bench of this court delivered in the case of *Municipal Corporation, Jodhpur Vs. Raj Kumar* (supra) and effect of the amendment has also been considered by the Single Bench of this court in the case of *Lalit Kumar Bothar's case*

(supra) and the Single Bench of this court interpreted the judgment of the Division Bench, referred above by holding that “the question of using the land for any purpose other than for which it is allotted so as to invite application of the provisions of Section 173A whether amended or unamended does not arise. Change in permissible use can only occur when in the first instance the land is sold with such condition about particular use to which land could be put. Else freedom to use the land for any purpose is uninhibited.” Learned counsel for the respondent tried to distinguished all the judgments by relying upon the judgment of the Kishanlal Punglia (supra) wherein the judgment of the Lalit Kumar Bothara (supra) was considered by the learned Single Judge of this court. It appears from the entire judgment that the learned Single Judge in the case of Kishan Lal Pungalia (supra) held as under: -

“As referred above, sub-section (2) of Section 173A mandates that even if the land may not have been purchased from the Municipal Corporation, State Government or the local authority and if the land is situated within the Master Plan area, its use whether residential or commercial can be permitted only by the Municipal Corporation in accordance with the conditions of the Master Plan.”

The learned Single Judge has not held that the law laid down in the Lalit Kumar Bothar's case (supra) is applicable to the cases under the unamended provision and after amendment the proposition propounded

in the Lalit Kumar Bothar's case (supra), which is in consonance with the Division Bench Judge of Municipal Corporation, Jodhpur Vs. Raj Kumar (supra) will not govern the case under the amended provision of Section 173A. The learned Single Judge in Kishan Lal Pungalia's case (supra) itself took note of the pronouncement on the point in the judgment of Lalit Kumar Bothara's case (supra) and distinguished the case of Kishan Lal Pungalia (supra) on the ground that the land involved in the Lalit Kumar Bothar's case (supra) was situated in the Sirohi State whereas in the case of Kishan Lal Pungalia (supra) the Master Plan is in force. What has been held in the case of Kishan Lal Pungalia (supra), as quoted above, clearly reveals that the learned Single Judge in the above judgment only held that for all land, may it be, sold by the Municipal Board, State Government or local authority any may land has not been sold by those, but if the land is situated within the Master Plan area it use whether residential or commercial can be permitted only by the Municipal Corporation in accordance with the conditions of the Master Plan. The petitioner in this case is also seeking permission to raise construction only and that is in consonance with the land use shown in the Master Plan only. The petitioner is not seeking conversion of the land and, therefore, neither the judgment of Kishan Lal Pungalia (supra) can be read to mean that in all cases even if there is no restriction for use of the land and the land is already in use for the purpose, which has

been shown in the Master Plan, still the Municipal Corporation or any authority can recover the conversion charges from the land holder. It will be relevant to mention here that in the the case of Kishan Lal Pungalia (supra) neither the 'Patta' of the property was filed and from the document produced (Annex.1) it was not clear that for what purpose the land was purchased by the petitioner. The learned Single Judge in Kishan Lal Pungalia's case (supra) found that the judgments relied upon by the learned counsel for the petitioner Lalit Kumar Bothara's case has no application which is clear from the relevant portion of the judgment of Kishan Lal Pungalia's case, which as under:

“The pronouncement relied upon by the learned counsel for the petitioner was dealing with a land allotted to the ancestors of the petitioner by the then Sirohi State and the land was allotted without restriction on the use of the land and in the above fact situation, the learned Single Judge of this Court was of the view that the question of using the land for any purpose other than for which it is allotted so as to invite application under Section 173-A does not arise because the change in permissible use can only occur when in the first instance, the land is sold with such a condition.” (emphasis supplied)

Lastly, I do not find any force in the submission of learned counsel for the respondent that petitioner himself sought conversion of land

from residential to commercial purposes and for that purpose submitted application dated 11th July, 2003, copy of which is placed on record as Annex.7 because of the simple reason that this letter only written to the Dy. Secretary, Urban Development Department, Government of Rajasthan, Jaipur conveying the said authority that the land in question is commercial since beginning and its use has also been shown as commercial in the Master Plan and on this land there were godowns of the Rajasthan Ware Housing Corporation and it was the land of Garden Hotel. It was also conveyed that petitioner wants to obtain a permission from the Municipal Council for construction of a commercial building. After submitting above factual aspect of the land, the petitioner requested that in the matter of adjoining land, the High Court has already passed the order not to demand commercial charges, therefore, the necessary instruction be issued for according permission. That letter hardly can be read to be an application for getting the land converted.

In view of the above, the writ petition of the petitioner deserves to be allowed, hence allowed. The order dated 28th March, 2003 (Annex.6) demanding conversion charges from the petitioner for converting the land to the commercial purpose is quashed and set aside. The respondents are restrained from demanding any amount on account

of conversion charges for use of land by the petitioner. The respondents are directed to decide the application of the petitioner for grant of permission of the construction without demanding any conversion charges. No order as to costs.

(PRAKASH TATIA), J.

c.p.goyal/-